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TO USMISSION GENEVA PRIORITY

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PASS TO HAROLD BENGELSDORF, US DEL TO ECE

SENIOR ENVIRONMENTAL ADVISORS

FOL REPEAT EC BRUSSELS 01520 SENT ACTION SECSTATE INFO ANKARA

ATHENS BERN BONN BRUSSELS COPENHAGEN DUBLIN

HELSINKI THE HAGUE LISBON LONDON LUXEMBOURG MADRID OSLO

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NOFORN

E.O. 11652: N/A

TAGS: SENV, EEC, OECD

SUBJECT: EC COMMISSION MEMORANDUM ON THE POLLUTER PAYS
PRINCIPLE (PPP)

REFS: A) STATE 33462

B) EC BRUSSELS 0260

C) STATE 1695

D) EC BRUSSELS 10099, 1974

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1. SUMMARY: THE COMMISSION OFFICIALS RESPONSIBLE FOR THE EC

TRANSITIONAL PERIOD GUIDELINES FOR THE POLLUTER PAYS PRINCIPLE (PPP) IS AWARE OF THEIR DIVERGENCE FROM THE OECD GUIDELINES. HE NEVERTHELESS SAW IT AS THE BEST POSSIBLE "POLITICAL" COMPROMISE TO PRESERVE BOTH THE EC ENVIRONMENT PROGRAM AND THE PPP IN LIGHT OF THE TYPES OF AID THAT MEMBER STATES WERE PREPARED TO OFFER. END SUMMARY.

2. IN RESPONSE TO REFTEL A, THE MISSION ON FEB. 19, DISCUSSED THE EC COMMISSION'S MEMORANDUM ON THE POLLUTER PAYS PRINCIPLE, (PPP) WITH DIETER HAMMER, THE EC COMMISSION DIVISION CHIEF IN THE ENVIRONMENT SERVICE RESPONSIBLE FOR THE POSITIONS CONTAINED IN THE MEMORANDUM, AND ZITO, THE OFFICIAL WHO REPRESENTS THE COMMISSION ON ENVIRONMENT MATTERS AT INTERNATIONAL MEETINGS. WE WENT OVER THE POINTS RAISED IN REFTEL A STRESSING THAT IT IS IMPORTANT TO HAVE FRANK AND CANDID DISCUSSIONS ON ISSUES OF MUTUAL CONCERN AND THAT WE BELIEVE THAT THE OECD MEMBER STATES SHOULD BE GUIDED BY THE OECD RECOMMENDATION. HAMMER SAID HE APPRECIATED THE IMPORTANCE OF THE ISSUE, CONSIDERED IT PERFECTLY NORMAL THAT WE EXPRESS OUR CONCERNS ABOUT THE MEMORANDUM AND RECOGNIZED THAT THE COMMISSION MEMORANDUM WILL CONTINUE TO POSE PROBLEMS FOR HIM BECAUSE OF CERTAIN MEMBER STATE OBJECTIONS TO IT.

3. IN RESPONSE TO THE POINTS RAISED IN REFTEL A PARAS 6 AND 7 HAMMER GAVE THE FOLLOWING EXPLANATION OF BOTH THE LEGAL AND POLITICAL CONSIDERATIONS BEARING ON THE COMMISSION'S MEMORANDUM. HE RECOGNIZED THE INCOMPATABILITY BETWEEN THE TRANSITIONAL PERIOD GUIDELINES AND THE OECD RECOMMENDATIONS BUT SAID THAT HE WAS FACED WITH A "POLITIACL" DECISION AND CHOSE WHAT HE BELIEVED WAS THE BEST COMPROMISE TO ACHIEVE BOTH ENVIRONMENT AND PPP OBJECTIVES.

4. REGARDING THE LEGAL BACKGROUND, HE SAID THE COMMISSION MEMORANDUM MUST BE SEEN IN THE CONTEXT OF ARTICLE 92 OF THE ROME TREATY (STATE AIDS) WHICH DISALLOWS STATE AIDS UNLESS THEY ARE FOR REGIONAL POLICY (92(3)(A)) OR SECTORAL POLICIES (92(3)(C)). THE COMMISSION BELIEVED THAT CERTAIN MEMBER STATES WOULD BE OFFERING AID FOR ENVIRONMENTAL PURPOSES FOR ALL INDUSTRIES UNDER THE GUISE OF EITHER REGIONAL OR SECTORAL AIDS, BOTH OF WHICH ARE PERMISSABLE UNDER THE TREATY WITHOUT A LIMITED OFFICIAL USE

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TIME CONSTRAINT. TO FORCE THE MEMBER STATES TO DISCLOSE THEIR ENVIRONMENTAL AID SYSTEMS AS SUCH AND TO AVOID A LONG AND BITTER CONFRONTATION WITH CERTAIN MEMBER STATES, WHICH WOULD HAVE PRESENTED TREMENDOUS RISKS TO THE COMMISSION'S ENVIRONMENTAL PROGRAM AND PPP, HAMMER OPTED FOR THE TRANSITIONAL PERIOD SOLUTION. AN ADDITIONAL REASON GIVEN WAS THAT THE COMMISSION FOUND THAT THERE WAS A LARGE BACKLOG IN INVESTMENTS TO IMPROVE THE ENVIRONMENT AND DURING A LIMITED PERIOD OF

TIME FELT IT WISE TO ENLARGE AID POSSIBILITIES.

5. THE SPECIFIC CASE THAT TRIGGERED THE TRANSITIONAL PERIOD SOLUTION INVOLVED FRANCE. THE COMMISSION DIRECTORATE GENERAL FOR COMPETITION REJECTED AS TOO HIGH A FRENCH AID SCHEME WHICH PROVIDED AID OF UP TO 30 PERCENT OF INVESTMENT FOR POLLUTION CONTROL IN THE SUGAR INDUSTRY. ALTHOUGH HAMMER WAS RELUCTANT TO GO INTO DETAIL, HE GAVE THE IMPRESSION THAT THE FRENCH WOULD HAVE GONE AHEAD AND FORCED THE COMMISSION TO TAKE THEM TO THE EUROPEAN COURT AND THUS POSE A POLITICALLY UNACCEPTABLE CONFRONTATION.

6. HAMMER DOES NOT SEE THE GUIDELINES UNDERCUTTING THE PPP PRINCIPLE. HE CLAIMED THAT THERE IS A CLEAR UNDERSTANDING ON THE PART OF THE MEMBER STATES THAT AT THE END OF THE TRANSITION PERIOD ENVIRONMENT AID MUST BE JUSTIFIED ON THE GROUNDS OF REGIONAL OR SECTORAL DIFFICULTIES, I.E., SELECTIVELY, AS ENVISIONED BY THE OECD GUIDELINES. HE SAID THE LEVEL OF AID FOR THE FIRST TWO YEARS WAS SET AS HIGH AS IT WAS BECAUSE OF THE BELGIAN WATER POLLUTION CONTROL AID SYSTEM, (THE BELGIANS ORIGINALLY WERE PREPARED TO OFFER AID AT 60 PERCENT OF INVESTMENT). THE NON-SELECTIVE ASPECT OF THE TRANSITIONAL AID WAS NECESSARY BECAUSE OF NATIONAL SYSTEMS, SUCH AS GERMANY'S ACCELERATED DEPRECIATION, WHICH ALTHOUGH LOW (12-15 PERCENT OF INVESTMENT), WERE APPLICABLE GENERALLY. HE ARGUED THAT THE COMMISSION GUIDELINES ARE NOT AN INVITATION FOR MEMBER STATES TO ADOPT EITHER GENERALIZED TRANSITIONAL AIDS OR A HIGH LEVEL OF AIDS. ON QUESTIONING, HE ADMITTED THAT THE ITALIANS ARE THINKING OF HIGH LEVELS OF AID BUT SAID MOST MEMBER STATES ARE UNLIKELY TO OFFER ANYTHING NEAR THE 14 PERCENT OF INVESTMENT SUBSIDY ALLOWED DURING THE FIRST TWO YEARS. HE NOTED THAT THE BRITISH AND DUTCH DO NOT WANT TO OFFER AID FOR ENVIRONMENTAL PURPOSES. THEY ARE CONCERNED LIMITED OFFICIAL USE

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ABOUT POSSIBLE TRADE AND INVESTMENT DISTORTIONS AND THE PRESSURES THAT MAY BE MADE ON THEM BY THEIR RESPECTIVE INDUSTRIES TO MATCH OTHER MEMBER STATE SUBSIDIES WERE THEY TO BE SUBSTANTIAL. HE SAID THAT THE COMMISSION WILL CONCERN ITSELF WITH POSSIBLE DISTORTIONS.

7. REGARDING THE OTHER POINTS MADE IN REFTEL A, HAMMER ANSWERED AS FOLLOWS:

A) PARA 8(B) - THE COMMISSION BELIEVES THAT DIFFERENT MEMBER STATE APPROACHES TO ENVIRONMENTAL COSTS DISTORT TRADE WITH THIRD COUNTRIES AS WELL AS WITHIN THE EC BUT THE FOCUS OF THE MEMORANDUM WAS BY ITS NATURE, ON THE EC. B) PARA 8(C). THE COMMISSION POSITION ON AID TO NEW PLANTS IS THAT ALTHOUGH THE COMMISSION OPPOSES AID TO NEW PLANTS, THE COMMISSION SHOULD BE ABLE TO CONSIDER THE POSSIBILITY IF OTHER COUNTRIES GIVE

SUCH AID. HAMMER STATED THAT THE OECD NOVEMBER RECOMMENDATION DOES NOT ABSOLUTELY EXCLUDE AID TO NEW PLANTS. C) PARA 9 - HAMMER SAID THAT THE EC STRONGLY BELIEVES THAT EXCEPTIONS TO THE PPP SHOULD NOT SERVE TO DISTORT TRADE WITH NATIONS OUTSIDE, OR INSIDE, THE COMMUNITY. D) PARA 10 - REGARDING EXCEPTIONS SPEEDING UP ADHERENCE TO THE PPP, HAMMER SAID THAT THE TRANSITIONAL PERIOD SYSTEM MAKES THE THE POLLUTER PAY 55 PER CENT OF THE INVESTMENT FOR THE FIRST TWO YEARS AND INCRJASINGLY MORE DURING THE NEXT FOUR. THE TRANSITIONAL SCHEME PUTS PPP ON THE TABLE, MAKES IT CLEAR WHAT AIDS ARE FOR AND ELIMINATES THE NEED TO GRANT AID TO ANY AND ALL INDUSTRIES UNDER A REGIONAL OR SECTORAL GUISE. HAMMER ARGUED THAT THE TRANSITIONAL GUIDELINES ARE CLEAR, WILL SOON DISAPPEAR, AND IF MEMBER STATES VIOLATE THEM, THE COMMISSION, CAN TAKE THEM TO COURT. HE DID NOT SEE AIDS UNDER THE TRANSITIONAL SYSTEM AS BEING DIFFICULT TO DISLODGE. E) PARA 11 - HAMMER SAID HE WAS IN COMPLETE AGREEMENT THAT ENVIRONMENT AIDS, AFTER THE TRANSITIONAL PERIOD, SHOULD BE GRANTED VERY SPARINGLY UNDER TERMS ENDORSED BY ALL OF THE OECD MEMBER STATES AND SHOULD BE SELECTIVE. THE AIDS FOR ENVIRONMENT ASSISTANCE FALLING UNDER REGIONAL AND SECTORAL EXCEPTION WHICH MAY BE GRANTED AFTER THE TRANSITIONAL PERIOD UNDER ARTICLES 92(A) AND (C) WILL BE CLOSELY CONTROLLED BY THE COMMISSION IN LIGHT OF THE OECD RECOMMENDATION AS IT DEVELOPS.

8. COMMENT: AFTER THE MEETING, ZITO VOLUNTEERED THAT PPP MIGHT BE AN APPROPRIATE SUBJECT FOR THE NEXT US-EC BILATERAL LIMITED OFFICIAL USE

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ENVIRONMENT MEETING AND THAT BENGELSDORF (STATE/SCI/ENV) MAY WISH TO DISCUSS IT WITH CARPENTIER WHEN THEY ARE TOGETHER AT THE OECD IN EARLY MARCH. END COMMENT.GREENWALD

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